

1 Honorable Barbara Rothstein  
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6 **UNITED STATES DISTRICT COURT**  
7 **WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

8 SHARON ADAMS,

9 Plaintiff,

10 v.

11 WALMART INC., a foreign corporation,

12 Defendant.

No. 2:21-cv-00538 BJR

STIPULATED PROTECTIVE ORDER

14 **PURPOSES AND LIMITATIONS**

15 Discovery in this action is likely to involve production of confidential, proprietary, or  
16 private information for which special protection may be warranted. Accordingly, the parties  
17 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The  
18 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket  
19 protection on all disclosures or responses to discovery, the protection it affords from public  
20 disclosure and use extends only to the limited information or items that are entitled to confidential  
21 treatment under the applicable legal principles, and it does not presumptively entitle parties to file  
22 confidential information under seal.

23 **2. “CONFIDENTIAL” MATERIAL**

24 “Confidential” material shall include the following documents and tangible things  
25 produced or otherwise exchanged:

1           • Plaintiff's medical records and personal identification information  
2           • Walmart's internal policies and procedures and training materials

3.       SCOPE

4           The protections conferred by this agreement cover not only confidential material (as  
5 defined above), but also (1) any information copied or extracted from confidential material; (2)  
6 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
7 conversations, or presentations by parties or their counsel that might reveal confidential material.

8           However, the protections conferred by this agreement do not cover information that is in  
9 the public domain or becomes part of the public domain through trial or otherwise.

10          4.       ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

11          4.1       Basic Principles. A receiving party may use confidential material that is disclosed  
12 or produced by another party or by a non-party in connection with this case only for prosecuting,  
13 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
14 the categories of persons and under the conditions described in this agreement. Confidential  
15 material must be stored and maintained by a receiving party at a location and in a secure manner  
that ensures that access is limited to the persons authorized under this agreement.

16          4.2       Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
17 by the court or permitted in writing by the designating party, a receiving party may disclose any  
18 confidential material only to:

19           (a)      the receiving party's counsel of record in this action, as well as employees  
20 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

21           (b)      the officers, directors, and employees (including in house counsel) of the  
22 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
23 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
24 designated;

(c) experts and consultants to whom disclosure is reasonably necessary for this

litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court, court personnel, and court reporters and their staff;

(e) copy or imaging services retained by counsel to assist in the duplication of material, provided that counsel for the party retaining the copy or imaging service not to disclose any confidential material to third parties and to immediately return originals and copies of any confidential material;

(f) during their depositions, witnesses in the action to whom disclosure is

reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"

(Exhibit A), unless otherwise agreed by the designating party or ordered by the court, provided,

however, that a party may use confidential material at a deposition or court proceeding of a

deponent or witness who has not already signed the certification in the form of Exhibit A hereto,

in which case, the party's obligation shall be to ask that the deponent or witness sign the

certification, but the party's right to proceed with the deposition or court proceeding shall not

depend on the deponent's or witness's willingness to do so. In the event a deponent or witness

being shown confidential material refuses to sign the certification, the deponent or witness shall

not be permitted to retain, reproduce, or copy all or any part of the confidential material. Pages of

transcribed deposition testimony or exhibits to depositions that reveal confidential material must

be separately bound by the court reporter and may not be disclosed to anyone except as permitted

under this agreement;

(g) the author or recipient of a document containing the information or a

custodian or other person who otherwise possessed or knew the information.

4.5 Filing Confidential Material. Before filing confidential material or discussing or

Referencing such material in court filings, the filing party shall confer with the designating party,

in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will

1 to seal or stipulation and proposed order is warranted. During the meet and confer process, the  
2 designating party must identify the basis for sealing the specific confidential information at issue,  
3 and the filing party shall include this basis in its motion to seal, along with any objection to sealing  
4 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed  
5 and the standards that will be applied when a party seeks permission from the court to file material  
6 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the  
7 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.  
8 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance  
9 with the strong presumption of public access to the Court's files.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
12 or non-party that designates information or items for protection under this agreement must take  
13 care to limit any such designation to specific material that qualifies under the appropriate  
14 standards. The designating party must designate for protection only those parts of material,  
15 documents, items, or oral or written communications that qualify, so that other portions of the  
16 material, documents, items, or communications for which protection is not warranted are not  
swept unjustifiably within the ambit of this agreement.

17 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
18 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
19 unnecessarily encumber or delay the case development process or to impose unnecessary  
20 expenses and burdens on other parties) expose the designating party to sanctions.

21 If it comes to a designating party's attention that information or items that it designated  
22 for protection do not qualify for protection, the designating party must promptly notify all other  
23 parties that it is withdrawing the mistaken designation.

24 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
25 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or

1 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
2 be clearly so designated before or when the material is disclosed or produced.

3                   (a)     Information in documentary form: (e.g., paper or electronic documents and  
4 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
5 the designating party must affix the word “CONFIDENTIAL” to each page that contains  
6 confidential material. If only a portion or portions of the material on a page qualifies for  
7 protection, the producing party also must clearly identify the protected portion(s) (e.g., by making  
8 appropriate markings in the margins).

9                   (b)     Testimony given in deposition or in other pretrial proceedings: the parties  
10 and any participating non-parties must identify on the record, during the deposition or other  
11 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other  
12 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after  
13 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the  
14 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect  
15 confidential information at trial, the issue should be addressed during the pre-trial conference.

16                   (c)     Other tangible items: the producing party must affix in a prominent place  
17 on the exterior of the container or containers in which the information or item is stored the word  
18 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
19 the producing party, to the extent practicable, shall identify the protected portion(s).

20                5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
21 designate qualified information or items does not, standing alone, waive the designating party’s  
22 right to secure protection under this agreement for such material. Upon timely correction of a  
23 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
24 in accordance with the provisions of this agreement.

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2       6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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4       6.1     Timing of Challenges. Any party or non-party may challenge a designation of  
5 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
7 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
challenge a confidentiality designation by electing not to mount a challenge promptly after the  
original designation is disclosed.

8       6.2     Meet and Confer. The parties must make every attempt to resolve any dispute  
9 regarding confidential designations without court involvement. Any motion regarding  
10 confidential designations or for a protective order must include a certification, in the motion or in  
11 a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference  
12 with other affected parties in an effort to resolve the dispute without court action. The certification  
13 must list the date, manner, and participants to the conference. A good faith effort to confer requires  
a face-to-face meeting or a telephone conference.

14       6.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
15 intervention, either party may file and serve a motion to retain confidentiality under Local Civil  
16 Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in  
17 any such motion shall be on the designating party. Frivolous challenges, and those made for an  
18 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties)  
19 may expose the challenging party to sanctions. All parties shall continue to maintain the material  
20 in question as confidential until the court rules on the challenge.

21       7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
22 LITIGATION

23       If a party is served with a subpoena or a court order issued in other litigation that compels  
24 disclosure of any information or items designated in this action as "CONFIDENTIAL," that party  
25 must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

## 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

#### **10. NON TERMINATION AND RETURN OF DOCUMENTS**

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts

1 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
2 destruction.

3 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
4 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
5 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
6 work product, even if such materials contain confidential material.

7 The confidentiality obligations imposed by this agreement shall remain in effect until a  
8 designating party agrees otherwise in writing or a court orders otherwise.

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10 DATED this 21st day of May 21, 2021.

11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
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13 WOOD, SMITH, HENNING & BERMAN, RUIZ & SMART PLAINTIFF LITIGATION  
14 LLP

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25 *Attorneys for Plaintiff*

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2 PURSUANT TO STIPULATION, IT IS SO ORDERED  
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4 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
5 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or  
6 state proceeding, constitute a waiver by the producing party of any privilege applicable to those  
7 documents, including the attorney-client privilege, attorney work-product protection, or any other  
privilege or protection recognized by law.  
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9 DATED: May 24, 2021  
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13 Barbara Jacobs Rothstein  
U.S. District Court Judge  
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EXHIBIT A

#### ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of *Adams v. Walmart, Inc.*, No. 2:21-cv-00538 BJR (W.D. Wash). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name:

Signature: